

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

WILLIAM A. THIE  
GENERAL COUNSEL  
JOE C. CRAWFORD  
GENERAL SOLICITOR

6-237A01  
AUG 24 1976  
LAW DEPARTMENT  
701 COMMERCE STREET  
DALLAS, TEXAS 75202  
214-651-6736

ARTHUR M. ALBIN  
GENERAL ATTORNEY  
MICHAEL E. ROPER  
COMMERCE COUNSEL

Fee \$ 50-

RECORDATION NO. 0450 Filed & Recorded

August 19, 1976

ICC Washington, D. C.

AUG 24 1976 9 22 AM

INTERSTATE COMMERCE COMMISSION

IN REPLY REFER TO: 410.043-20

Mr. Robert L. Oswald, Secretary,  
Interstate Commerce Commission  
Washington, DC 20423

Re: Conditional Sale Agreement dated July 12, 1976  
between Texas Bank and Trust Company of Dallas  
and Missouri-Kansas-Texas Railroad Company.

Dear Mr. Oswald:

In accordance with the provisions of Section 20c of the Interstate Commerce Act and the rules and regulations of the Interstate Commerce Commission thereunder, there is submitted to you herewith for filing three (3) original counterparts of executed copies of a Conditional Sale Agreement dated July 12, 1976, by and between Texas Bank and Trust Company of Dallas, as Vendor, and Missouri-Kansas-Texas Railroad Company, as Vendee, which said Conditional Sale Agreement provides for the purchase of various items of equipment which are described as follows:

Two (2) Fairmont M19 Series "H" Inspection Motor Cars,  
Serial Nos. 242037 and 242087

Four (4) Fairmont S2 Series "K" Section Motor Cars,  
Serial Nos. 242227, 242228, 242229, and 242230

Four (4) Fairmont T6 Series "A" Steel Frame Push Cars,  
Serial Nos. 241566, 241567, 241568, and 241569

The identifying marks to be placed upon the items shown above are  
"TEXAS BANK AND TRUST COMPANY OF DALLAS - OWNER."

There is also enclosed herewith a cashier's check payable to the Interstate Commerce Commission in the amount of \$50.00 to cover the prescribed filing fee and recordation of the above document.

You are authorized to return 2 of the 3 counterparts to me, with the filing data noted thereon, and I will see that each party to the Agreement receives a copy.

I certify that I have knowledge of the matters set forth herein.

Very truly yours,

Arthur M. Albin

AMA:vas  
Enclosures

FEE OPERATION BR.  
I.C.C.

AUG 24 9 49 AM '76

RECEIVED

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

OFFICE OF THE SECRETARY

**8/24/76**

•  
**Mr. Arthur M. Albin, Gen. Atty.**  
**Missouri Kansas- Texas Railroad Company**  
**Law Department**  
**701 Commerce Street**  
• **Dallas, Texas 75202**

Dear Sir:


The enclosed document was recorded pursuant to the provisions  
of Section 20c of the Interstate Commerce Act, 49 U.S.C. 20c, on  
at , and assigned recordation number

**(9:25am**

**8/24/76**

**8450**

Sincerely yours,

  
Robert L. Oswald  
Secretary

Enclosure

SE-39  
(2/75)

TEXAS BANK & TRUST COMPANY OF DALLAS

REGISTRATION NO. 0450 Filed & Recorded

AND

AUG 24 1976 - 9 22 AM  
INTERSTATE COMMERCE COMMISSION

MISSOURI-KANSAS-TEXAS RAILROAD

COMPANY

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C O N D I T I O N A L   S A L E   A G R E E M E N T

July 12, 1976

COVERING

TRACTORS, RADIO COMMUNICATIONS  
EQUIPMENT, CRANES, AIR COMPRESSOR,  
RAIL DRILLS, MOTOR CARS, RAIL SAWS  
AND PUSH CARS

---

TEXAS BANK & TRUST COMPANY OF DALLAS

AND

MISSOURI-KANSAS-TEXAS RAILROAD

COMPANY

---

AGREEMENT AND CONSENT

July 1976

THIS AGREEMENT, dated as of July 12<sup>th</sup>, 1976, by and between MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office in the City of Dallas, Texas (hereinafter called "Railroad"), and TEXAS BANK & TRUST COMPANY OF DALLAS, a banking corporation organized and existing under and by virtue of the laws of the State of Texas, having its principal place of business in Dallas, Dallas County, Texas (hereinafter called "Bank"),

W I T N E S S E T H

In consideration of the mutual promises, covenants, and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. Construction and Sale

(a) Railroad has heretofore ordered from Wells Brothers Farm Store, Inc., of Plano, Texas ("Vendor"), two (2) Case Model 580-B Tractors with Diesel Engines and Power Shuttle Transmissions, Model 35 Backhoe and Loader at a cost of \$16,600.00 each; and three (3) Case David Brown Model 380 Diesel Tractor with GB H.D. Model GB602 Sidewinder 6-ft. Mower (Wt. 785#) equipped with overrunning clutch at a cost of \$7,365.85 each, all as more particularly described in Railroad's Purchase Order No. D-92823 dated April 13, 1976; and contemplates delivery and acceptance thereof at Denison, Texas, on or before July 15, 1976, and upon acceptance will assume liability and risk of loss therefor as hereinafter provided.

The total purchase price therefor of \$58,062.43, including tax, will be advanced by Bank by its honoring and acceptance of a sight draft drawn by Vendor on Bank in such amount accompanied by Vendor's Bill of Sale in favor of Bank, which said draft shall be marked "Void if detached from a Bill of Sale in favor of Drawee."

Prior to Bank's honoring such Bill of Sale, Bank shall have received a Certificate of Acceptance executed by an authorized official of the Railroad, certifying that the Railroad has accepted delivery of the equipment described in this Paragraph 1(a) for and on behalf of Bank and

that same complies fully and in all respects with the specifications and requirements of the Purchase Order No. D-92823 given by Railroad to Vendor (which said Certificate of Acceptance shall constitute conclusive evidence that the equipment does in fact conform to the Purchase Order) and, further, that Bank has additionally received the usual warranties customarily afforded purchasers of the type of equipment described in this Paragraph 1(a). In the event that such warranties require or need a specification as to "Buyer or Owner," same shall specify Texas Bank & Trust Company of Dallas, and by its acceptance hereof, Vendor agrees that such warranties may be immediately assigned or endorsed by Bank in favor of Railroad without invalidating any of the terms thereof and, further, that Railroad may be considered a first user with full rights to enforce all material particulars of such warranties in its name as though it were in fact the owner thereof.

(b) Railroad has heretofore ordered from Pettibone Corporation of Irving, Texas ("Vendor"), one (1) Pettibone Industrial Crane, Model 200 FD; one (1) 5 KW DC Generator; one (1) Reel and Tagline Rudomatic; 60 feet of No. 8 Cable; and one (1) Controller with Safety Switch, all as more particularly described in Purchase Order No. D-91574 given Vendor by Railroad under date of March 5, 1976; and contemplates delivery and acceptance thereof at Denison, Texas, on or before July 15, 1976, and upon acceptance will assume liability and risk of loss as hereinafter provided.

The purchase price therefor of \$40,507.95 will be advanced by Bank in the manner and under the terms and conditions set forth in Paragraph 1(a) and 2 hereof.

(c) Railroad has heretofore ordered from Southwestern States Management Company ("Vendor"), one (1) Model 160 Schramm Air Compressor, Gasoline Powered on Skids, and contemplates delivery and acceptance thereof at Denison, Texas, on or before July 15, 1976, and upon acceptance thereof will assume liability and risk of loss as hereinafter provided.

The purchase price therefor of \$6,698.77 will be advanced by Bank in the manner and under the terms and conditions set forth in Paragraph 1(a) and 2 hereof.

(d) The Railroad has heretofore ordered from Fairmont Railway Motors, Inc., of St. Louis, Missouri ("Vendor"), four (4) S-2 Fairmont Motor Cars, two (2) M-19 Fairmont Motor Cars, and four (4) Fairmont T-6

Push Cars, all as described in Railroad's Purchase Order No. D-92872, dated May 3, 1976, and contemplates delivery and acceptance thereof at Denison, Texas, on or before July 2, 1976, and upon acceptance thereof will assume liability and risk of loss as herein provided.

The estimated purchase price therefor of \$22,327.62, including estimated freight charges of \$768.07, shall be advanced by Bank in the manner and under the terms and conditions set forth in Paragraph 1(a) and 2 hereof, provided, however, that the Vendor shall also attach to the sight draft the invoice showing freight charges and taxes, if any.

(e) The Railroad has heretofore ordered from Racine Railroad Products, Inc., of Racine, Wisconsin ("Vendor"), Racine Rail Saws as described in Railroad's Purchase Order No. D-91768, dated March 10, 1976, and contemplates delivery and acceptance thereof at Denison, Texas, on or before July 15, 1976, and upon acceptance will assume liability and risk therefor as hereinafter provided.

The purchase price therefor of \$6,369.85 shall be advanced by Bank in the manner and under the terms and conditions set forth in Paragraph 1(a) and 2 hereof.

(f) The Railroad has heretofore ordered from Motorola Inc. ("Vendor"), Radio Communications Equipment and contemplates final delivery and acceptance thereof at Denison, Texas, on or before August 1, 1976, and upon acceptance thereof will assume liability and risk of loss as hereinafter provided.

The purchase price thereof is \$84,881.92. Bank acknowledges that Railroad has paid to Vendor, in cash or in other good and valuable considerations, the sum of \$12,500 and the remaining sum of \$72,381.92 shall be advanced by Bank in the manner and under the terms and conditions set forth in Paragraph 1(a) and 2 hereof.

(g) The Railroad has heretofore leased from Motorola Inc. radio communications equipment as described in Exhibit A, which equipment has been assigned to Associates Capital Service Corporation ("Associates") which represents an acquisition cost of \$236,922.20 and contemplates delivery and acceptance thereof from Associates at Denison, Texas, on or before July 15, 1976, and upon acceptance will assume liability and risk of loss therefor as hereinafter provided.

The total purchase price of the radio communications equipment to be acquired from Associates was in the sum of \$236,922.20 of which said amount Railroad has previously paid, by cash and other good and valuable considerations, the sum of \$43,310.85, and the remainder of \$193,611.35 shall be advanced by Bank by its honoring and accepting a sight draft drawn by Associates on Bank in the amount of \$193,611.35 accompanied by Associates' Bill of Sale in favor of Bank and also accompanied by a release of all lease obligations pertaining to the radio communications equipment covered by the said Bill of Sale. Railroad shall provide Bank with appropriate Certificates of Acceptance duly executed by an authorized officer of the Railroad.

2. Purchase Price and Payment

The total purchase price of the property described in Paragraph 1 above, including estimated freight charges where applicable and sales taxes, is in the total sum of \$455,770.74, of which said sum the Railroad shall deliver to the Bank at or prior to Bank's honoring and accepting any of the drafts provided for in Paragraph 1 above the total amount of \$49,959.89 as set forth below in column (3), to-wit:

Vendor Listed in Paragraph	(1) Total Purchase Price	(2) Previous Downpmt. by Railroad	(3) Railroad's Downpmt. to Bank	(4) Bank Borrowing	(5) Total Bank Disbursement at Closing
1(a)	\$58,062.43	\$ -0-	\$13,062.43	\$ 45,000	\$ 58,062.43
1(b)	40,507.95	-0-	8,507.95	32,000	40,507.95
1(c)	6,698.77	-0-	1,698.77	5,000	6,698.77
1(d)	22,327.62	-0-	5,327.62	17,000	22,327.62
1(e)	6,369.85	-0-	1,369.85	5,000	6,369.85
1(f)	84,881.92	12,500.00	7,381.92	65,000	72,381.92
1(g)	<u>236,922.20</u>	<u>43,310.85</u>	<u>12,611.35</u>	<u>181,000</u>	<u>193,611.35</u>
	\$455,770.74	\$55,810.85	\$49,959.89	\$350,000	\$399,959.89

Railroad shall pay the balance of the purchase price in the amount of \$350,000.00 to the Bank in fifty (50) consecutive monthly installments of \$7,000.00 each, commencing on August 15, 1976, together with interest monthly on all amounts of unpaid principal balance at a rate which from time to time

shall be the prime commercial borrowing rate of Bank plus three-quarters ( $3/4$ ) of one percent (1%), as the same be established on the last business day of the preceding calendar month, but in no event to exceed a rate per annum of twelve percent (12%), and in no event shall interest thereon be calculated at a rate less than eight percent (8%) per annum, and nothing herein contained shall be construed to postpone the final maturity of this Conditional Sale Agreement beyond September 15, 1980, and all balances of principal and interest hereunder shall then be finally due and payable. In the event that the 15th day of any month should fall on a legal holiday, then in such event payment shall be due and owing on the next business day.

Railroad will pay interest on all amounts of principal and interest unpaid if the same become past due hereunder at the highest rate permitted by applicable law but shall have the right to prepay all or any part of the deferred purchase price at any time without penalty.

In the event any of the transactions set forth in Paragraph 1, above fail to materialize or are for reduced sums, then the payment set forth herein shall be reduced proportionately.

3. Taxes.

Railroad will hold Bank harmless from all loss, cost or expense of any sales, use or occupation taxes incurred in the transfer of title to Bank or delivery of any equipment hereunder.

4. Title.

The Bills of Sale first above mentioned shall vest full legal title in and to the property in Texas Bank & Trust Company of Dallas until Railroad shall have made all of the payments and kept and performed all of the covenants in this Agreement contained, notwithstanding the fact of the permitted use and possession thereof by Railroad. Any and all replacement parts to any item of equipment conveyed to Bank shall be considered accessions thereto and will be the subject of all terms and conditions hereof.

Railroad, so long as it not be in default hereunder, shall be entitled to the use and possession thereof, subject to the terms and conditions herein contained.

Railroad will cause any item of equipment delivered hereunder



having an original cost in excess of \$2,500.00, to be identified plainly, distinctly, and conspicuously, in letters not less than one (1) inch in height, as belonging to Texas Bank & Trust Company of Dallas, either through the use of the expression "PROPERTY OF" or followed by the word "OWNER" and will not otherwise allow the name of any other person, association or corporation to be placed thereon in a manner which might be interpreted as a claim of ownership thereto; provided, however, that Railroad may separately mark or identify for inventory purposes, its residual interest therein.

When Bank has been fully paid and all of Railroad's covenants and agreements herein contained have been performed, then title shall pass to and vest in Railroad without further transfer or action on the part of Bank, except that Bank will, if requested, execute and deliver to Railroad a suitable Bill of Sale transferring title to such equipment to Railroad, free and clear of any lien or encumbrance or choses arising hereby and will execute such instruments in writing as may be necessary or appropriate to make clear such transfer of title.

5. Insurance.

Bank recognizes that the present deductible provisions contained in Railroad's policies of insurance against loss, damage or destruction of equipment, exceed the balance of the deferred purchase price hereunder, and in contemplation thereof, Bank agrees to look solely to Railroad as "self-insurer" thereof and herewith grants to Railroad the continuing right, in event of loss, damage or destruction to either:

- (a) Substitute equipment of like or similar nature of reasonably equal value to that lost, damaged or destroyed; or
- (b) Increase its particular monthly payment next due by that amount representing the original cost thereof of the item or items lost, damaged or destroyed, less an amount equal to the percentage which that payment bears to the total number of payments due.

If, by reason of Bank's ownership of any item of equipment, a claim for liability against Bank shall arise while such equipment be in the possession of or used by Railroad, then Railroad shall indemnify and save harmless Bank for all loss, cost and expense of such defense, if Bank be called upon to defend, and shall likewise fully indemnify Bank against any recoveries made by virtue of any such claim.

6. Maintenance and Repair

Railroad will at all times maintain all items of equipment which are the subject hereof in good order and repair, reasonable wear and obsolescence excepted, at its sole risk, cost and expense.

7. Compliance with Applicable Laws.

Until the total purchase price hereunder provided to be paid by Railroad to Bank shall have been fully paid, Railroad will comply in all respects regarding the possession and use of such equipment in a manner to comply with all rules and regulations of any legislative, executive, administrative or judicial body having jurisdiction over such equipment or use thereof; provided, however, that Railroad may in good faith contest the application of any such rule or regulation which it, in good faith, considers as affecting the title to such equipment, and further provided that such contest thereof shall not otherwise cause a default hereunder.

8. Reports and Inspections.

Railroad will furnish Bank, upon request but not more often than once in any year, an accurate inventory of the equipment covered hereby, which will state the condition thereof and such additional information as may be reasonably requested by Bank, and Bank shall have the continuing right at reasonable times, to inspect the equipment.

9. Prohibition against Liens.

Railroad will satisfy and discharge all sums claimed by any parties which, if unpaid, might become a lien or charge on the equipment for which Bank as owner might otherwise be responsible, and if Railroad fails to do so, Bank may satisfy such lien or charge and be secured by and under this Agreement, retaining title to all equipment hereunder until fully reimbursed therefor.

10. Prohibition against Assignment.

Railroad will not sell, transfer or assign or otherwise dispose of its rights or duties hereunder nor transfer possession of any item of equipment which is the subject hereof without first obtaining the written consent of Bank.

11. Defaults.

In the event that any one or more of the following events of default shall occur, to-wit:

(a) Railroad fails to pay in full when due, any installment of principal or of interest at the time and in the manner hereinbefore contracted to be paid, as provided herein; or

(b) Railroad fails to remedy within thirty (30) days a written notice from Bank of a particular default hereunder; or

(c) The bankruptcy or insolvency or assignment for the benefit of the creditors of Railroad, or the appointment of a receiver for Railroad or any of its properties (unless such receiver is discharged within twenty (20) days following such appointment) if this agreement be covered by any such proceedings; or

(d) Railroad transfers or attempts to transfer its interest in or under this Agreement without the consent of Bank;

then Bank may declare the entire purchase price, together with accrued interest, immediately due and payable together with any past due interest at the rate hereinabove stated, and shall be entitled to judgment for such amount together with costs and expenses of securing the same, including reasonable attorneys' fees.

12. Remedies.

In addition to Bank's right to accelerate as above cited and receive judgment therefor, Bank may, at its election, repossess itself of all items of equipment which are the subject hereof and sell the same at public or private sale, with or without advertisement, but subject to and in compliance with any requirements of the law then applicable to such sale, and from the proceeds thereof, less expenses, credit to all balances then due and owing such proceeds and be entitled to judgment for and execution upon any deficiency then remaining.

The remedies shall be in addition to any other remedy now or hereafter existing in law or in equity and may be exercised from time to time and simultaneously and as often and in such order as Bank may deem necessary, and the exercise of one shall in no instance be deemed a waiver of the right to exercise all or any other legal or equitable remedy.

No delay or omission by Bank in the exercise of any right or remedy shall impair the subsequent exercise thereof or be construed as a waiver of the right to use such remedy.

In the event that Bank shall, from the exercise of its right of public or private sale, realize a surplus over all the then remaining balances of principal and interest, attorneys' fees, cost and expenses, then such surplus shall be paid over to Railroad.

13. Payment of Expenses.

Railroad will pay all costs, taxes, charges and expenses incident to the preparation, execution, filing, or recording this Agreement if the same be required, including reasonable attorneys' fees of Bank.

14. Notices:

Any notices hereunder to Railroad shall be deemed properly served if delivered or mailed to the Railroad at 701 Commerce Street, Dallas, Texas 75202, and to Bank at its premises at One Main Place, Dallas, Texas 75250, Attention: Mr. William E. Dykes, Assistant Vice President.

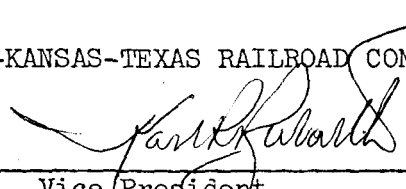
This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

The terms of this Agreement and all rights and obligations hereunder shall be covered by the laws of the State of Texas.

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed at Dallas, Dallas County, Texas, on this 12<sup>th</sup> day of July, 1976.

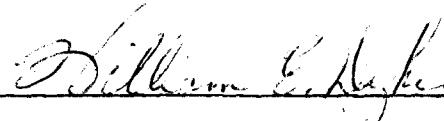
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By

  
Vice President

TEXAS BANK & TRUST COMPANY OF DALLAS

By



THE STATE OF TEXAS )  
 )  
COUNTY OF DALLAS )

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Karl R. Ziebarth, Vice President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 12th day of July, 1976.

R. E. Mc Cormick  
Notary Public in and for Dallas County,  
T E X A S

My Commission expires: 6-1-77

THE STATE OF TEXAS )  
 )  
COUNTY OF DALLAS )

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared William E. Dykes, Assistant Vice President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the TEXAS BANK & TRUST COMPANY OF DALLAS, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 15th day of July, 1976.

Andrea Smith  
Notary Public in and for Dallas County,  
T E X A S

My Commission expires: June 1, 77

The undersigned acknowledge receipt of notice of that certain Conditional Sale Agreement by and between MISSOURI-KANSAS-TEXAS RAILROAD COMPANY and TEXAS BANK & TRUST COMPANY OF DALLAS, dated the \_\_\_\_ day of \_\_\_\_\_, 1976, and by their assents below, do not become parties to, but agree to accept their respective payments at the times and in the manner therein provided.

DATE:

WELLS BROTHERS FARM STORE, INC.

By \_\_\_\_\_

DATE:

PETTIBONE CORPORATION

By \_\_\_\_\_

DATE:

\_\_\_\_\_

SOUTHWESTERN STATES MANAGEMENT CO.

By \_\_\_\_\_

DATE:

\_\_\_\_\_

FAIRMONT RAILWAY MOTORS, INC.

By \_\_\_\_\_

DATE:

\_\_\_\_\_

RACINE RAILROAD PRODUCTS, INC.

By \_\_\_\_\_

DATE:

\_\_\_\_\_

MOTOROLA INC.

By \_\_\_\_\_

DATE:

\_\_\_\_\_

ASSOCIATES CAPITAL SERVICE CORPORATION

By \_\_\_\_\_

EXHIBIT AEQUIPMENT SOLD PURSUANT TO CONDITIONAL SALE AGREEMENT BETWEEN  
TEXAS BANK & TRUST COMPANY OF DALLAS AND  
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

<u>QUANTITY</u>	<u>DESCRIPTION</u>	
85	R43RTE1190A	
85	W503	
85	W523	
22	TLN1007	Rack
22	TMN6002D	Handset
22	TCN6108J	
7	H33AAU1110N	
4	H33AAU3140N	
4	H913	Pre Amp
11	NLN8831	Batt
11	NLN8856	Chgr
5	T1050	Digital Multimeters
2	SB50	Power Meters with Elements
56	T43RTN1100K	Mobile
21	T43RTN1190K	Mobile
21	W503	
21	W523	
7	T43RTN1190K	Mobile
7	W501	
7	W521	
7	W574	Ch Scan
7	W49	Housing
6	T43RTN1100	Mobile
4	D33 A3300K	Mobile
4	B544	Ant